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Applicants	: Goddard, Audrey et al.
Patent No.	: 7,442,765
Issued	: October 28, 2008
For	: SECRETED TRANSMEMBRANE POLYPEPTIDES AND NUCLEIC ACIDS ENCODING THE SAME
Examiner	: David S. Romeo
Conf #	: 8123

**APPLICATION FOR PATENT TERM ADJUSTMENT 37 C.F.R. § 1.705(d)**

**Mail Stop Petition**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants submit this Application for Patent Term Adjustment (PTA) to correct the Office's PTA calculation of 573 days. The above-referenced patent issued on October 28, 2008, and therefore this application under 37 C.F.R. § 1.705(d) is timely filed within two months of the issue date.

Applicants believe they are entitled to a longer period of patent adjustment under 35 U.S.C. § 154(b) in light of the decision in *Wyeth v. Dudas*, No. 07-1492 (JR) (D.D.C. Sept. 30, 2008), and request that the Office recalculate Applicants' PTA in accordance with that ruling.

Applicants submit that the correct PTA is **633 days** based on the following facts:

1. Applicants are entitled to **612 days** of PTA under **35 U.S.C. § 154(b)(1)(A)** ("prosecution delays"). Applicants' PTA calculation under 35 U.S.C. § 154(b)(1)(A) is represented in the table below.
2. The Office's PTA determination listed on the face of the patent does not properly account for the days of PTA under 35 U.S.C. § 154(b)(1)(B). Applicants submit that, in light of *Wyeth v. Dudas*, they are entitled to an additional **60 days** of PTA under **35 U.S.C. § 154(b)(1)(B)**, for the Office's failure to issue a patent within three years of its application filing date subject to exclusion of any time consumed by continued

examination requested by the applicant ("issuance delay"). Thus, the applicable time period to determine Applicants' § 154(b)(1)(B) PTA is the day after the date that is three years after Applicants' application filing date, May 2, 2005, to the date Applicants filed the first RCE, July 1, 2005.

3. The § 154(b)(1)(B) PTA period, May 2, 2005 to July 1, 2005, encompasses 60 days. Under *Wyeth*, this 60-day delay should be reduced by any overlapping "prosecution delay" days that also occurred in this period. In this case, however, there are no "overlapping days." First, the Office's 435-day delay in issuing a Non-Final Action after the application filing date occurred *before* May 2, 2005, the start of the § 154(b)(1)(B) PTA "issuance delay" period. Second, the Office's 177-day delay in issuing the patent after payment of the issue fee occurred *after* July 1, 2005, the end of the § 154(b)(1)(B) PTA "issuance delay" period. Thus, Applicants submit they are entitled to 60 days of "issuance delay."
4. Under *Wyeth*, the proper patent term adjustment is the sum of non-overlapping "prosecution delays" and "issuance delays," minus any Applicant delay. Thus, Applicants submit they are entitled to the sum of 612 days of "prosecution delay" and 60 days of "issuance delay," minus 39 days of Applicant delay, for a **total patent term adjustment of 633 days**.

Applicants' PTA calculation is as follows:

Actions Under 35 U.S.C. § 154(b)(1)(A)		Delays		
Initial	Responsive	PTO	App	Over
5/1/2002 Filing Date	9/8/2004 Non-Final Office Action	435		
9/8/2004 Non-Final Office Action	12/10/2004 Response After Non-Final Action		2	
3/30/2005 Final Rejection	7/1/2005 Request for Continued Examination (RCE)		1	
7/20/2006 Request for Continued Examination (RCE)	8/25/2006 Supplemental Response		36	
1/4/2008 Issue Fee Paid	10/28/2008 Issue Date	177		

Actions Under 35 U.S.C. § 154(b)(1)(B)		PTO	App	Over
5/1/2005 3 Years from Filing Date	7/1/2005 Request for Continued Examination (RCE)	60		
Actions Under 35 U.S.C. § 154(b)(1)(A) and (B)		Delay & Overlap		
Totals	PTO Delays	672		
	Applicant Delays		39	
	Period of Overlap			0
	Patent Term Adjustment	633		

The present application is not subject to a terminal disclaimer.

Applicants hereby request that the Office correct the calculation of PTA to reflect 633 days.

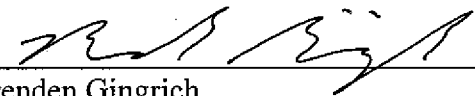
The \$200 fee prescribed by 37 CFR 1.18(e) is enclosed.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 12/18/08

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